

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

**FROM: EDWARD JEWELL
DEPUTY ATTORNEY GENERAL**

DATE: JUNE 2, 2020

**SUBJECT: IN THE MATTER OF IDAHO POWER'S PETITION TO DETERMINE
THE PROJECT ELIGIBILITY CAP FOR PUBLISHED AVOIDED COST
RATES AND THE APPROPRIATE CONTRACT LENGTH FOR ENERGY
STORAGE QUALIFYING FACILITIES; CASE NO. IPC-E-20-02.**

On January 21, 2020, Idaho Power Company ("Idaho Power" or "Company") filed a petition with the Idaho Public Utilities Commission ("Idaho PUC") requesting the Idaho PUC determine the appropriate project eligibility cap and contract term for energy storage qualifying facilities ("QF" or "QFs") under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Petition at 11.

On February 10, 2020, the Idaho PUC issued a Notice of Application and Notice of Intervention Deadline. Order No. 34552. No parties intervened.

The Company requests the Idaho PUC determine that energy storage QFs up to a maximum nameplate capacity of 100 kW are eligible for published avoided cost rates and a 20-year contract while energy storage QFs over 100 kW are eligible for avoided cost rates determined using the incremental cost Integrated Resource Plan method ("IRP method") and a maximum contract term of two years. Petition at 11.

BACKGROUND

The project eligibility cap is the project size threshold below which QFs are entitled to published avoided cost prices. Federal Energy Regulatory Commission ("FERC") rules implementing PURPA require states to set project eligibility caps at a minimum of 100 kilowatts and allow states to set higher project eligibility caps. 18 C.F.R. § 292.304(c)(1),(2). Minimum

contract terms are not specifically established in PURPA or FERC regulations. *See* Order No. 33357 at 12.

In 2017, the Company petitioned the Idaho PUC for a declaratory order determining that five energy storage QFs, Franklin Energy Storage One – Four and Black Mesa, were subject to the same project eligibility cap and contract term as solar QFs. In IPC-E-17-01, the Idaho PUC determined those five energy storage QFs were subject to the 100 kW project eligibility cap and were eligible for two-year contracts because the primary energy input to the QFs was initially to be solar and the Idaho PUC determined the forecasted generation output profiles of the QFs were similar to the output of solar QFs. Order No. 33785 at 11-13.

Pursuant to 16 U.S.C. § 824a-3(h)(2)(B), Franklin Energy Storage One – Four appealed the Idaho PUC's decision to federal district court. In *Franklin Energy Storage One et al. v. Kjellander et al.*, the United States District Court for the District Court of Idaho determined the Idaho PUC violated PURPA by impermissibly classifying the plaintiffs' energy storage facilities as solar QFs. The district court's decision is currently on appeal.

STAFF RECOMMENDATION

Staff notes that no parties intervened in this case. Staff believes the legal, technical, and policy complexities of this case would benefit from additional public input. Therefore, Staff proposes to process this case through an enhanced version of Modified Procedure designed to solicit different viewpoints. Staff proposes to first file preliminary comments that state preliminary Staff positions and seek public input on specific issues that may lend valuable insight regarding the project eligibility cap and contract length. Staff would then assess whether and to what degree to incorporate the publicly provided information in its analysis and file a revised set of comments. Staff recommends the Company follow the same procedure of issuing preliminary comments that seek additional input and then filing revised comments after reviewing the public input.

Staff recommends a July 16, 2020 deadline for initial comments and requests for public input, an August 6, 2020 deadline for the public to respond to the initial comments and requests for public input, and an August 27, 2020 deadline for revised comments.

COMMISSION DECISION

Does the Commission wish to issue a Notice of Modified Procedure establishing a July 16, 2020 deadline for initial comments and requests for public input, an August 6, 2020 deadline for the public to respond to the initial comments and requests for public input, and an August 27, 2020 deadline for revised comments?



Edward J. Jewell
Deputy Attorney General

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